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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,935	01/29/2004	Roger Williams	A894641US	1867
37047	7590	04/07/2006	EXAMINER	
GOWLING LAFLEUR HENDERSON LLP SUITE 1400, 700 2ND ST. SW CALGARY, AB T2P 4V5 CANADA			MANAF, ABDUL	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/765,935	WILLIAMS, ROGER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Abdul Manaf	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/29/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1, 7, 8, 14, 15 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by the U.S. Patent No. 3,559,338 to A. F. Klingberg.**

In regard to claims 1 and 15, Klingberg discloses a retainer wall system (Fig. 1: 10) that is flexibly (column 1, lines 52-53) conformable (column 1, lines 54-56), comprising a plurality of wall segments (11) each having coupling means (12, 19) situate at opposed ends thereof to permit interlocked coupling (see Fig. 5) of each wall segments together to form a retainer wall; each of the wall segments comprising a plurality of substantially vertical elongate members (see Fig. 8) arranged in parallel, substantially mutually adjacent position, each said vertical member having resiliently flexible web means (20) flexibly coupling each said vertical member to an adjacent vertical member so as to permit flexible bending (column 1, lines 50-59) of each said wall segments about a vertical axis there through to said desired conformed position; one or more of plurality of vertical elongate members having longitudinal bore means (22, a nail in a boring) extending substantially parallel to vertical axis; and elongate ground fixation means (22), adapted to be inserted through longitudinal bore means and into the ground (see Fig. 3).

In regard to claims 7 and 20, Klingberg discloses a retainer wall system wherein coupling means comprise a longitudinal bore means (22, a nail in a boring); wherein a fixation means (22) is inserted there-through and into the ground coupling opposed ends (19) of wall segments (11) together and simultaneously affix them in a desired conformed position (see Figs. 1-5).

In regard to claims 8, Klingberg discloses a kit comprising a retainer wall system (Fig. 1: 10) that is flexibly (column 1, lines 52-53) conformable (column 1, lines 54-56), comprising a plurality of wall segments (11) each having coupling means (12, 19) situate at opposed ends thereof to permit interlocked coupling (see Fig. 5) of each wall segments together to form a retainer wall; each of the wall segments comprising a plurality of substantially vertical elongate members (see Fig. 8) arranged in parallel, substantially mutually adjacent position, each said vertical member having resiliently flexible web means (20) flexibly coupling each said vertical member to an adjacent vertical member so as to permit flexible bending (column 1, lines 50-59) of each said wall segments about a vertical axis there through to said desired conformed position; one or more of plurality of vertical elongate members having longitudinal bore means (22, a nail in a boring) extending substantially parallel to vertical axis; and elongate ground fixation means (22), adapted to be inserted through longitudinal bore means and into the ground (see Fig. 3).

In regard to claim 14, Klingberg discloses a kit comprising a retainer wall system wherein coupling means comprise a longitudinal bore means (22, a nail in a boring); wherein a fixation means (22) is inserted there-through and into the ground coupling

opposed ends (19) of wall segments (11) together and simultaneously affix them in a desired conformed position (see Figs. 1-5).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 3, 4, 10, 11, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the U.S. Patent No. 3,559,338 to A. F. Klingberg.**

In regard to claims 3 and 17, Klingberg discloses a retainer wall system wherein wall segments (11), web means (20) and vertical members are plastic material (column 1, lines 59-61). However, Klingberg does not disclose plastic material comprising medium density polypropylene or polyethylene. It would have been an obvious design choice to use plastic comprising polypropylene or polyethylene retainer wall system

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members in order to have desired hardness or softness in the system while lowering the material cost.

In regard to claims 4 and 18, while Klingberg discloses a retainer wall system, wherein said elongate ground fixation means (22) comprises a plurality of elongate peg member adapters (20, a nail in a boring), he does not specifically teach steel peg usage. It would have been an obvious design choice to use steel peg for ground insertion application where the ground would be a hard ground.

In regard to claim 10, Klingberg discloses a kit comprising a retainer wall system wherein wall segments (11), web means (20) and vertical members are plastic material (column 1, lines 59-61). However, Klingberg does not disclose plastic material comprising medium density polypropylene or polyethylene. It would have been an obvious design choice to use plastic comprising polypropylene or polyethylene retainer wall system members in order to have desired hardness or softness in the system while lowering the material cost.

In regard to claim 11, while Klingberg discloses a kit comprising a retainer wall system, wherein said elongate ground fixation means (22) comprises a plurality of elongate peg member adapters (20, a nail in a boring), he does not specifically teach steel peg usage. It would have been an obvious design choice to use steel peg for ground insertion application where the ground would be a hard ground.

**Claims 5, 12 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the U.S. Patent No. 3,559,338 to A. F. Klingberg in view of the U.S. Patent No. 386,652 to Rimback et al.**

In regard to claims 5 and 19 Klingberg discloses a retainer wall system wherein coupling means (12, 19) comprise interlocked coupling or hinge means (12) (column 1, lines 52-55) to connect wall segments (11) to each other (see Fig. 5). However, Klingberg does not specifically disclose a pivot-able coupling. Rimback discloses a pivot-able coupling for a retainer wall system (Fig. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Klingberg by using a pivot-able coupling for improved flexibility in order to have more variety of the wall system arrangements.

In regard to claim 12 Klingberg discloses a kit comprising a retainer wall system wherein coupling means (12, 19) comprise interlocked coupling or hinge means (12) (column 1, lines 52-55) to connect wall segments (11) to each other (see Fig. 5). However, Klingberg does not specifically disclose a pivot-able coupling. Rimback discloses a pivot-able coupling for a retainer wall system (Fig. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Klingberg by using a pivot-able coupling for improved flexibility in order to have more variety of the wall system arrangements.

**Claims 2, 6, 9, 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the U.S. Patent No. 3,559,338 to A. F. Klingberg in view of the U.S. Patent No. Des. 276,494 to Novak et al.**

In regard to claims 2 and 16, while Klingberg discloses a retainer wall system, wherein vertical members comprise elongate rectangular members (11), longitudinal bore means (22, a nail in the boring) comprising a longitudinal bore along a longitudinal

axis of at least one of rectangular member, he does not disclose a cylindrical member. However, Novak discloses a retainer wall system wherein vertical members comprise elongate cylindrical members (see Figs. 1, 7) having longitudinal bore means (Fig. 2). Klingberg as well teaches a wide range of shapes or configurations of plastic molded hollow members (column 1, lines 59-62). It would have been a matter of design choice to one of ordinary skill in the art to have cylindrical members for facilitated manufacture, lower material cost (column 1, lines 64-65) and additional structural strength.

In regard to claims 6 and 13 while Klingberg discloses a retainer wall system wherein plastic (column 1, lines 59-61) vertical members comprise elongate rectangular members (11), he does not disclose cylindrical members comprising medium density polypropylene or polyethylene having an imitation wood grain. However, Novak discloses a retainer wall system wherein plastic vertical members comprise elongate cylindrical members comprising polypropylene or polyethylene having an imitation wood grain (see Fig. 1). It would have been a matter of design choice to one of ordinary skill in the art to have plastic vertical members comprise elongate cylindrical members comprising polypropylene or polyethylene having an imitation wood grain for facilitated manufacture, lower material cost and additional structural strength and ornamental purposes.

In regard to claim 9, while Klingberg discloses a kit comprising a retainer wall system, wherein vertical members comprise elongate rectangular members (11), longitudinal bore means (22, a nail in the boring) comprising a longitudinal bore along a longitudinal axis of at least one of rectangular member, he does not disclose a



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cylindrical member. However, Novak discloses a retainer wall system wherein vertical members comprise elongate cylindrical members (see Figs. 1, 7) having longitudinal bore means (Fig. 2). Klingberg as well teaches a wide range of shapes or configurations of plastic molded hollow members (column 1, lines 59-62). It would have been a matter of design choice to one of ordinary skill in the art to have cylindrical members for facilitated manufacture, lower material cost (column 1, lines 64-65) and additional structural strength.

**Contact Information**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Abdul Manaf whose telephone number is 571-272-1476. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AM *A.M.*

03/28/2006

  
N. Slack  
Primary